McKEE *v.* BUNTING-McNEAL REAL ESTATE CO., Inc.

March 13, 1913.

[77 S. E. 515.]

1. **Evidence (§ 419*)—Parol Evidence to Vary Writing—Consideration in Deed.**—In an action by a grantor to recover the purchase price, or by the grantee to recover it back, parol evidence is admissible to show that the consideration actually paid or promised is other than that recited in the deed, or to contradict the recital in the deed that the consideration has been paid, but it is not permissible to alter or contradict the legal import of the deed.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1912-1928; Dec. Dig. § 419.* 10 Va.-W. Va. Enc. Dig. 702; 14 Va.-W. Va. Enc. Dig. 804; 15 Va.-W. Va. Enc. Dig. 768.]

2. **Deeds (§ 109*)—Construction—Consideration—Variance between Deed and Contract.**—In a contract for the sale of land for $3,000 cash, the purchaser agreed to erect a dwelling house on the land to cost not less than $4,100, as soon as the vendor assured her sewerage, etc., for use of said building, and on failure to erect such building to pay such vendor a further sum of $550, with a further covenant that no dwelling house should be built on any lot "fronting on the boulevard" costing less than $2,500. The vendor was interested in the sale of real estate in the same neighborhood. The deed stated that the consideration was $3,550, and contained a covenant that no dwelling house should be built on the land to cost less than $2,500. Held, that the condition in the deed as to the cost of dwelling houses erected on the land was not a substitute for the provision as to the erection of a house costing $4,100, and that the consideration was $3,550 with the option to the purchaser of reducing it to $3,000 by erecting a house costing $4,100, on notice that the company could assure sewerage, etc.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 239, 280, 598-600; Dec. Dig. § 109.* 4 Va.-W. Va. Enc. Dig. 419.]

3. **Vendor and Purchaser (§ 314*)—Action for Purchase Price—Admissibility of Evidence.**—Where a contract of sale of land states that the consideration is $3,000, and the purchaser agrees to erect a dwelling house on the land to cost not less than $4,100, as soon as the vendor assured her sewerage for use of said building, and on failure to erect such building to pay the vendor a further sum of $550, notwithstanding a deed had been received for the land, and the deed stated that the consideration was $3,550 and $3,000 of the consideration was paid, and the vendor sues to recover the remaining $550, the contract of sale is admissible in evidence.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. §§ 920-927; Dec. Dig. § 314.* 13 Va.-W. Va. Enc. Dig. 552.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

Error to Law and Equity Court of City of Richmond.

Action by the Bunting-McNeal Real Estate Company against Mrs. Charles I. McKee. Judgment for plaintiff, and defendant brings error. Judgment affirmed.

COOK *v.* COMMONWEALTH.

March 20, 1913.

[77 S. E. 608.]

1. Grand Jury (§ 5*)—Qualifications—Supervisor.—A member of a grand jury was not disqualified because he was also a member of the county board of supervisors, and as such had supervision over the roads; he not being an "overseer of a road" within Code 1904, § 3977, making such officers ineligible as grand jurors.

[Ed. Note.—For other cases, see Grand Jury, Cent. Dig. §§ 8-13, 15; Dec. Dig. § 5.* 6 Va.-W. Va. Enc. Dig. 744.]

2. Homicide (§ 253*)—Evidence—Sufficiency.—Evidence held insufficient to sustain a conviction of murder in the first degree.

[Ed. Note.—For other cases, see Homicide, Cent. Dig. §§ 523-532; Dec. Dig. § 253.* 7 Va.-W. Va. Enc. Dig. 147.]

Error to Circuit Court, York County.

Hezekiah Cook was convicted of murder in the first degree, and he brings error. Reversed.

Frank Armistead and *T. H. Geddy,* both of Williamsburg, for plaintiff in error.

The Attorney General, for the Commonwealth.

SHIFLETT *v.* COMMONWEALTH.

March 20, 1913.

[77 S. E. 608.]

Indictment and Information (§ 114*)—Allegations—Second Offense—Necessity of Alleging.—While the indictment need not allege that the offense charged is accused's first offense, yet, in order to impose a severer punishment on the ground that the offense charged is the second or subsequent offense, the indictment must allege that fact.

[Ed. Note.—For other cases, see Indictment and Information, Cent. Dig. §§ 301-307; Dec. Dig. § 114.* 7 Va.-W. Va. Enc. Dig. 405.]

Error to Circuit Court, Greene County.

Marcus Shiflett was convicted of illegally selling intoxicants a license, and he brings error. Reversed.

John S. Chapman, of Standardsville, for plaintiff in error.

The Attorney General, for the Commonwealth.

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.